

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

STAMPEDE MEAT, INC.,

Plaintiff,

Civil No. 20-cv-1160 MV/CG

vs.

MICHELLE LUJAN GRISHAM, in her official capacity as GOVERNOR OF THE STATE OF NEW MEXICO, HECTOR BALDERAS, in his official capacity as the ATTORNEY GENERAL FOR THE STATE OF NEW MEXICO, BILLY J. JIMENEZ, in his official capacity as the ACTING CABINET SECRETARY OF THE NEW MEXICO DEPARTMENT OF HEALTH, JAMES C. KENNEY, in his official capacity as the CABINET SECRETARY OF THE NEW MEXICO ENVIRONMENT DEPARTMENT, THE NEW MEXICO ENVIRONMENT DEPARTMENT and THE NEW MEXICO DEPARTMENT OF HEALTH,

Defendants.

ORDER

THIS MATTER comes before the Court on Plaintiff Stampede Meat, Inc.’s Emergency Motion for Temporary Restraining Order, Preliminary Injunction, and Declaratory Judgment (the “Motion”) [Doc. 10]. The Court finds it appropriate to set an expedited briefing schedule on the Motion, rather than issue an emergency order on an *ex parte* basis.

On October 22, 2020, the Department of Health, through Defendant Jimenez and under authority provided by Defendant Lujan Grisham, issued a Public Health Order stating, *inter alia*, that any “business that poses a significant public health risk, as determined by the Department of Health” must close for a period of two weeks when four employees receive positive rapid response COVID-19 tests within a rolling 14-day period. Doc. 10 at 10. Between October 23,

2020 and October 27, 2020, Plaintiff had six rapid responses related to COVID-19 infections. Doc. 10 at 128. On November 3, 2020, Defendants served Stampede Meat with a “Notice of Immediate Closure Pursuant to Public Health Order” (“Stampede Closure Order”), in which Plaintiff was directed to “immediately close all business operations . . . for fourteen consecutive calendar days in accordance with the Public Health Order issued October 22, 2020.” Doc. 10 at 128.

On November 6, 2020, Plaintiff commenced the instant action by filing its Verified Complaint and Application for Declaratory Judgment and Injunctive Relief. Doc. 1. On November 9, 2020, Plaintiff filed the instant Motion, asking the Court to issue an emergency order, without notice to Defendants, restraining Defendants from the following: (1) enforcing the October 22, 2020 Order against Plaintiff; (2) enforcing the November 3, 2020 Stampede Closure Order; and (3) issuing any fine for Plaintiff’s failure to comply with Defendants’ orders.

This Court is authorized to issue a temporary restraining order “without written or oral notice to the adverse party or its attorney” only if two conditions are met: (1) “specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition” and (2) “the movant’s attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.” Fed. R. Civ. P. 65(b)(1). In support of its argument that “no further notice is warranted,” Plaintiff states only that “all Defendants have been served” with the Complaint. Doc. 10. There, however, is no record on the docket that any Defendant has been served with the Complaint. Nor does the Court find that service of the Complaint alone would satisfy the requirement that the movant’s attorney certify efforts made to give notice of the relief requested in the instant Motion and why that notice should not be required. Further, as the Stampede Closure Order was in effect for six days before Plaintiff filed the instant Motion, the

Court finds that the facts in the Complaint do not clearly show that immediate and irreparable injury, loss, or damage will result to Plaintiff before Defendants can be heard in opposition. The Court thus finds no grounds to issue an order on an emergency basis without providing Defendants with an opportunity to respond. It will, however, order an expedited briefing schedule on Plaintiff's Motion.

IT IS THEREFORE ORDERED that:

1. Plaintiff must effect service of a copy of this Order, together with Plaintiff's Emergency Motion for a Temporary Restraining Order, Preliminary Injunction and Declaratory Judgment [Doc. 10], and Plaintiff's Verified Complaint and Application for Declaratory Judgment and Injunctive Relief [Doc. 1], and any attachments thereto, to be received by Defendants **no later than 5:00 p.m. Mountain Standard Time (MST) on Tuesday, November 10, 2020**, notwithstanding any previous attempts made by Plaintiff to serve Defendants. Proof of any service done pursuant to this Order shall be filed with the Clerk of Court as soon as practicable.
2. If Defendants oppose Plaintiff's Motion, a written response shall be filed with the Court and served on Plaintiff no later than **Monday, November 16, 2020 at 5:00 p.m. MST**.
3. Plaintiff's reply, if any, shall be filed with the Court and served on Defendants no later than **Wednesday, November 18, 2020 at 5:00 p.m. MST**.
4. The Court will set a hearing on this matter if it finds that such a hearing is necessary.

DATED this 10th day of November 2020.



MARTHA VAZQUEZ
United States District Judge